Supreme Court, U. S.
FILED
OCT 31 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1548

OLD TOWN YACHT BASIN, INC.,

Petitioner,

v.

CITY OF ALEXANDRIA,

Respondent.

PETITION FOR REHEARING

KATHRYN B. LANG
Secretary-Treasurer
Old Town Yacht Basin, Inc.
500 South Union Street
Alexandria, Virginia 22314
(703) 836-1054
Counsel for Petitioner Pro Se.

October 31, 1975

Washington, D.C. • THIEL PRESS • (202) 638-4521

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1548

OLD TOWN YACHT BASIN, INC.,

Petitioner,

v.

CITY OF ALEXANDRIA,

Respondent.

PETITION FOR REHEARING

Pursuant to Rule 58, Rules of the Supreme Court of the United States, as amended, and guided by the exemplary case *Scribner-Schroth Co. v. Cleveland Trust Co.*, 305 U.S. 47,50). Petitioner files this brief in order to show to the Court that Petitioner had exhausted every means to obtain an impartial Trial and to show that because in the State of Virginia such a tremendous effort had been made in all levels of the government to secure for the local governmental authority, in whatever way

they could, title to the Potomac River waterfront in the Alexandria area; and to show that neither in the local Court to which this defendant was confined, nor in the State Supreme Court, could a fair and impartial hearing be had.

The evidence as to the size of this effort can be demonstrated by the fact that, in the past four years, at least four Bills were introduced into Congress by the U.S. Congressmen from the appropriate District, To Wit: H.R. 19842, 91st Congress, 2nd session, H.R. 14869, 92nd Congress, 2nd Session, H.R. 8896, 93d Congress, 1st Session, H.R. 14043, 93d Congress, 2nd Session.

There is presently underway a large effort to have Congressman herbert Harris, 8th District, introduce yet a fifth Bill of similar character.

The previous Bills all failed to pass muster because they sought to give to the Virginia governmental authority absolute powers over waterfront lands belonging to the people of the United States, so that once control passed to the local authority, exemptions in the Bills would remove the lands and waters from the jurisdiction of the U.S. Corps of Engineers, the U.S. Department of Interior, and any other governmental agencies which might have ordinarily a voice and effective influence in directing the use and development of the historic riverfront lands.

Petitioner being but a relatively insignificant factor in the overall strategies being employed, seeks to show unto the Court, that it would not under these circumstances be dealt with fairly. The concentration of power within the State seeking to take over the public lands was, and is, so overwhelming as to preclude Petitioner's right to due process and fair hearing.

ADDENDUM

Attached hereto as an addendum are:

1. Petitioner's copies of legal documents marked Exhibits A, B, and C, prepared and supposedly filed by the then Trial Attorney in the case.

2. Copy of Respondent's Supplemental Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Virginia, dated October 2, 1975, marked Exhibit D.

3. Copy of Petitioner's letter to David Ross Rosenfeld, Esq. dated September 2, 1975, marked Exhibit E.

4. Copy of Petitioner's letter to David Ross Rosenfeld, Esq. dated October 17, 1975, marked Exhibit F.

5. Letter of David Ross Rosenfeld, Esq., to Petitioner, dated October 20, 1975, marked Exhibit G.

6. Copy of letter from David Rosenfeld, Esq. to J. Howard Middleton, Jr., Esq., dated October 23, 1975, marked Exhibit H.

7. Affidavit of John C. Gager dated October 29, 1975, marked Exhibit I.

ARGUMENT

Exhibit D is attached hereto because of the uncertainty as to whether this Brief was considered by the Court, there being suggestion that it was not timely filed, or possibly not filed at all.

See Exhibit G, wherein our attorney inaccurately advises that the Petition was denied on October 1, inaccurately suggests that Petitioner is aware that he has been called worse things by clients. He inaccurately concludes that Petitioner has retained other counsel

when, what actually happened was that Mr. Miller volunteered to assist and was supposedly a longstanding friend of Mr. Rosenfeld's, and did actually come again to Petitioner on October 20, saying he had just come from Mr. Rosenfeld's office after conferring with him about this case.

It is clear from this letter and the series of letters related to Mr. Rosenfeld, that he has violated the canons which require him to be truthful to his client, to the Court, and to the adversary.

Petitioner however recognizes the seriousness of the allegations made by it and referred to at the beginning of Exhibit D, and deems it necessary to prove the truth and accuracy of its allegations, and the inaccuracy of Respondent's allegations. Also, because Petitioner has been given no choice, there is no forum but this in which Petitioner can fairly raise as a due process issue the question of the Trial Judge having been a member of the law firm which worked on the very complaint against Petitioner on which he shortly thereafter adversely ruled.

While under the present circumstances the specific evidence which brought this fact to Petitioner's attention may vanish, still the admission of the actual occurrence stands in Exhibit D.

The probability that such a chain of events could occur in any other jurisdiction is very small, and is a reality in the particular jurisdiction where the case was brought only because of the overriding importance of the strategies which motivate the local governmental authority in its efforts to obtain absolute custody, control and ownership of the Alexandria Virginia waterfront by whatever means.

As the record shows, Petitioner has sought and been denied access to any judicial Trial forum other than the Circuit Court for the City of Alexandria, and it is manifest that Petitioner could not obtain a fair trial in that forum.

One thing that was truthfully stated in Exhibit D was the fact that Judge Wiley Wright, before withdrawing from the case (without any suggestion on Petitioner's part) because of possible prejudice, did say that he would not look into the title question because the chief Judge had ruled on that in another case. Judge Kent also made the same statement, even though he knew the circumstances in the two cases were quite different, and that the related case referred to in Exhibit D, namely *Southern Railway Co. v. Old Town Yacht Basin, Inc.*, Law #10223, was decided before steps were taken by the Federal Government which resulted in the issuance of the letter of May 17, 1973 from Assistant Secretary of the Interior Nathaniel Reed. This letter is copied in the appendix and, in Petitioner's view, amounts to a permit under which Petitioner claims under the paramount title holder, the United States Department of Interior.

The denial of due process under the circumstances outlined in the argument should be compelling enough to warrant further consideration by the Court.

Respectfully submitted,

KATHRYN B. LANG
Secretary-Treasurer
Old Town Yacht Basin, Inc.
500 South Union Street
Alexandria, Virginia 22314
(703) 836-1054
Counsel for Petitioner Pro Se.

October 31, 1975

ADDENDUM

EXHIBIT A

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
CITY OF ALEXANDRIA

CITY OF ALEXANDRIA, a municipal corporation of Virginia,	:	
Plaintiff	:	
vs.		AT LAW NO. 2449
OLD TOWN YACHT BASIN, INC.,	:	
Defendant	:	

STATE OF VIRGINIA:

CITY OF ALEXANDRIA:

Personally appeared before me, the undersigned Notary in the State and City aforesaid, Kathryn B. Lang of the Old Town Yacht Basin, Inc., and made oath that, in their opinion, a fair and impartial trial, wherein the City of Alexandria is a party, could not be had in the City of Alexandria.

OLD TOWN YACHT BASIN, INC.

BY: /s/Kathryn B. Lang
Secretary-Treasurer

Subscribed and sworn to before me this __ day of June, 1974. My commission expires:

Notary Public

EXHIBIT B

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
CITY OF ALEXANDRIA

CITY OF ALEXANDRIA, a municipal corporation of Virginia,	:	
Plaintiff	:	
vs.		AT LAW NO. 2449
OLD TOWN YACHT BASIN, INC.,	:	
Defendant	:	

NOTICE

Notice is hereby given that on the ____ day of June, 1974, at 10:00 A.M. or as soon thereafter as the matter can be heard, the Defendant will move the Circuit Court of the City of Alexandria at the Court House thereof for an order transferring said cause from the Circuit Court of the City of Alexandria to the Circuit Court for Frederick or Warren County on the ground that the defendant has reason to believe that an impartial trial cannot be had in the City of Alexandria. Further that the City is a party to this action, and as a further grounds, this Court has an unappealed ruling prejudicial to the Defendant.

Said Motion will be made by and based upon this Notice, and the affidavit of the Defendant, a copy of which is served herewith and upon the pleadings, papers, records and files in this action.

OLD TOWN YACHT BASIN, INC.

BY: _____

LUTZ & KAVALJIAN
By:
Herman W. Lutz
Counsel for Defendant
109 S. Fairfax Street
Alexandria, Virginia

I hereby certify that a copy of the above, has been delivered to Lynn B. Sasso, 320 King Street, Suite 200, Alexandria, Virginia, Counsel for Plaintiff, this __ day of June, 1974.

Herman W. Lutz

EXHIBIT C

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
CITY OF ALEXANDRIA

CITY OF ALEXANDRIA, a municipal corporation of Virginia,	:	
Plaintiff	:	
vs.		AT LAW NO. 2449
OLD TOWN YACHT BASIN, INC.,	:	
Defendant	:	

BLEED THROUGH

MOTION FOR CHANGE OF VENUE

COMES now the Defendant, OLD TOWN YACHT BASIN, INC., and moves this Court for a change of venue on the basis that an impartial trial would be impossible in that one of the parties to this action is the City of Alexandria.

OLD TOWN YACHT BASIN, INC.

BY: _____

LUTZ & KAVALJIAN
By:
Herman W. Lutz
109 S. Fairfax Street
Alexandria, Virginia
Counsel for Defendant

I hereby certify that a copy of the above, has been delivered to Lynn B. Sasso, 320 King Street, Suite 200, Alexandria, Virginia, Counsel for Plaintiff, this __ day of June, 1974.

Herman W. Lutz

EXHIBIT D

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1548

OLD TOWN YACHT BASIN, INC.,

Petitioner,

v.

CITY OF ALEXANDRIA,

Respondent.

RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

BLEED THROUGH

(i)

TABLE OF CONTENTS

Page

STATEMENT IN RESPONSE TO PETITIONER'S REPLY BRIEF

I. Petitioner's Statements with Respect to Respondent's Statement of the Case are Immaterial to the Constitutional Issue Presented by the Petition for Writ of Certiorari .....

II. The Contentions and Allegations Concerning the Trial Judge's Participation in this Case should not be Considered Because this Issue was not Raised in the Courts Below, and, in Any Event, are Unfounded and Based on False Statements in the Attached Affidavits .....

CONCLUSION .....

TABLE OF CITATIONS

Case:

Ellis v. Dixon, 349 U.S. 458 (1955), reh. den. 350 U.S. 855 .....

Constitution, Regulations, Statutes, Rules:

United States Constitution, Fourteenth Amendment ....

Rule 24, Supreme Court Rules .....

TABLE OF CONTENTS OF APPENDIX

Order of the Circuit Court of the City of Alexandria, Virginia, Granting Respondent's Motion for Summary Judgment for Rent .....

Pursuant to Rule 24, Rules of the Supreme Court of the United States, as amended, respondent is filing this Supplemental Brief in response to new contentions and serious allegations in petitioner's Reply.

STATEMENT IN RESPONSE TO PETITIONER'S REPLY BRIEF

I.

PETITIONER'S STATEMENTS WITH RESPECT TO RESPONDENT'S STATEMENT OF THE CASE ARE IMMATERIAL TO THE CONSTITUTIONAL ISSUE PRESENTED BY THE PETITIONER FOR WRIT OF CERTIORARI.

Before discussing petitioner's new and serious allegations, brief comment should be made on statements in petitioner's Reply on page 2 continued through the middle of page 3. Respondent submits that these statements are not material to the basic question presented in the petition herein which is whether the trial court violated the Fourteenth Amendment to the Constitution of the United States in ruling to exclude evidence on the issue of title in real estate for the reason that the tenant, petitioner herein, could not avoid its obligation to pay rent to its landlord, respondent herein, by setting up title in a third party, a general rule of landlord-tenant law followed in Virginia. (Resp. Brief, p. 4). As stated in respondent's Brief, the trial court's ruling is a matter of state law and nothing in the petition or in petitioner's Reply can create a question of general importance or of federal interest. (Resp. Brief, p. 8-9).[1]

---

[1]Certain misunderstandings should be clarified, however, with respect to respondent's Statement of the Case. Petitioner main-

[footnote continued]

BLEED THROUGH

II.

THE CONTENTIONS AND ALLEGATIONS CONCERNING THE TRIAL JUDGE'S PARTICIPATION IN THIS CASE SHOULD NOT BE CONSIDERED BECAUSE THIS ISSUE WAS NOT RAISED IN THE COURTS BELOW, AND, IN ANY EVENT, ARE UNFOUNDED AND BASED ON FALSE STATEMENTS IN THE ATTACHED AFFIDAVITS.

It has been held that a party cannot raise an issue in seeking certiorari that was not raised below. *Ellis v. Dixon*, 349 U.S. 458 (1955), *reh. den.* 350 U.S. 855. In light of this case respondent submits that the contentions and allegations in the second portion of petitioner's Reply on pages 3 and 4 should not be considered by this Court because they deal with an issue not heretofore raised in this case; namely, the issue of recusal of the trial judge.

---

tains that it paid rent only through November, 1971, rather than December, 1971, as represented in respondent's Brief (Pet. Reply, p. 2). At the trial, it had been agreed that November, 1971, was the last month for which petitioner had paid its rent to respondent. However, just prior to entry of the final order, it came to the attention of respondent that the final check for rent submitted by petitioner was for December, 1971, rather than November, 1971. Since this miscalculation affected only the amount of rent due and owing, rather than the legal issues in the case, counsel for respondent and petitioner agreed to note and initial on the final order a credit of one month's rent. The trial judge, in entering the final order, reprinted herein as Appendix A, consented to this agreement by counsel for both parties. Petitioner also states in its Reply that rent was paid under the lease only through March, 1969 (Pet. Reply, p. 3). The trial court held, however, that at the expiration of the original lease a month-to-month tenancy was created, and the record indicates that rent was paid pursuant to this arrangement into 1971.

In addition to the rule discussed above, we suggest that this case be decided on its merits and not extraneous matter. In fact, we would normally not respond to such matter. However, in this instance petitioner has made serious and false allegations which we cannot let stand unchallenged on the record, particularly as they are based on misleading statements in the Reply and factually untrue statements sworn to in affidavits attached to said Reply (Pet. Add. 1, 2 and 3). In its Reply, petitioner contends that the trial judge's former law firm was so involved in this case that he should have withdrawn prior to trial. Respondent submits that this is not so. The law firm referred to in the Reply served, for a time, as counsel to the respondent in the waterfront title litigation instituted by the United States Government. (Resp. Brief, p. 8). Prior to filing the instant case for unpaid rent, a member of said law firm reviewed the respondent's initial pleading for the sole purpose of determining whether it in any way affected the title litigation in the federal courts. In addition, upon petitioner's filing a petition for removal to the United States District Court for the Eastern District of Virginia on March 4, 1974, a member of said law firm discussed with an assistant city attorney the city's response to said petition. The petition was dismissed and the case remanded to the state court on May 2, 1974. Other than these two reviews, the law firm had no interest in the instant case. Moreover, this law firm withdrew as counsel for the respondent in the title litigation for reasons wholly unrelated on July 26, 1974.

Furthermore, the trial judge, at a pre-trial conference in this case, informed counsel for both parties that his former law firm represented the respondent in the waterfront title litigation. At no time did any attorney

D THROUGH

for the petitioner ever request the trial judge to withdraw from this case. In addition, Judge Kent, while a member of said law firm, performed no work in either the waterfront title litigation or the instant case. The decision not to allow petitioner to litigate the title to the Alexandria waterfront in the instant case was made by Judge Wright at a pretrial hearing prior to the case being assigned to Judge Kent. This decision was in accord with a ruling of the Chief Judge in a related matter several months previous.

Even more serious than the unfounded implications in petitioner's. Reply are the affidavits accompanying it. Respondent submits that it was impossible for one Kathryn B. Lang to have been shown papers relating to this case with the law firm's letterhead in the law offices of her attorney as she states in her affidavit (Pet. Add. 1). To the best of our knowledge and belief, there are no such papers. In addition, the memorandum attached to this affidavit (Pet. Add. 2) also contains false statements. The law firm referred to most definitely did not prepare this case for the respondent or receive remuneration therefore; and, Herman Lutz, Esq. never suggested that the trial judge recuse in this case. And still further, Ms. Lang's other attorney mentioned in the affidavit never requested that this same trial judge withdraw from another wholly unrelated case as she states in the affidavit (Pet. Add. 1). Indeed, Judge Wright was scheduled for that case at the outset. As to the affidavit by one John Gager (Pet. Add. 3), this too is false. Again, to the best of our knowledge and belief, there are no papers with the firm's letterhead related to respondent's suit for rent.

The fact that so many false statements have been sworn to in affidavits and submitted by an attorney to

the Supreme Court of the United States is a matter of grave concern. In any event, however, these matters are extraneous to the basic issues before this Court and petitioner has not provided sufficient argument to compel reconsideration of the entire case.

CONCLUSION

For these reasons and for the reasons stated in respondent's Brief in Opposition, the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

/s/Cyril D. Calley
CYRIL D. CALLEY
Deputy City Attorney
City of Alexandria, Virginia

/s/J. Howard Middleton, Jr.
J. HOWARD MIDDLETON, JR.
Assistant City Attorney
City of Alexandria, Virginia
320 King Street, Suite 200
Alexandria, Virginia 22314
(703) 750-6287

Attorneys for Respondents

APPENDIX A

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
CITY OF ALEXANDRIA

CITY OF ALEXANDRIA, a municipal corporation of Virginia,	:	
Plaintiff	:	AT LAW NO. 2449
vs.		
OLD TOWN YACHT BASIN, INC.,	:	
Defendant	:	

ORDER

THIS CAUSE came on to be heard on the 21st day of June 1974, upon the Motion for Judgment for Rent with Exhibits filed by plaintiff herein, upon the Grounds of Defense, Amended Grounds of Defense and Counterclaim filed by the defendant herein, upon the Answer to Counterclaim filed by plaintiff, upon a Request for Admission of Facts and Genuineness of Documents by plaintiff, upon the defendant's Response to said Request, upon a Request for Admission of Facts and Genuineness of Documents by defendant, upon the plaintiff's oral response in open Court to said Request, upon the Motion for Summary Judgment by plaintiff, upon the stipulations by plaintiff and defendant, and was argued by counsel.

AND IT APPEARING TO THE COURT that the lease dated March 29, 1956, and recorded in Deed Book 430 at page 27 among the land records of the City of Alexandria, Virginia, entered into by the defendant's predecessors and the plaintiff, and assigned to the defendant with consent to the assignment by the plaintiff, expired on March 29, 1966; that negotiations toward a new rental agreement continued between plaintiff and defendant through June 1968; and that payments of rent in the amount of ONE DOLLAR ($1.00) per year were made thereafter on April 1, 1966, April 1, 1967, and May 13, 1968, and that such payments did not create an extension or renewal of the lease on a year to year basis;

AND IT FURTHER APPEARING TO THE COURT that on July 1, 1968, the plaintiff and defendant agreed to a tenancy from month to month at a rental in the sum of THREE HUNDRED DOLLARS ($300.00) per month by virtue of a letter dated June 17, 1968, marked plaintiff's Exhibit B and defendant's payment of the rent demanded commencing on July 1, 1968, and continuing through November 1971, all rent being current through November 1971; and that rent is due and owing the City for defendant's use and occupancy of the City owned land for December 1971 through January 1974, in the sum total of SEVEN THOUSAND EIGHT HUNDRED DOLLARS ($7,800.00);

AND IT FURTHER APPEARING TO THE COURT that the defendant Tenant is estopped to deny the plaintiff Landlord's title unless he claims title in himself, which the defendant has not done;

AND IT FURTHER APPEARING TO THE COURT that there is no question of fact to be determined by the jury; therefore, it is hereby

ED THROUGH

ADJUDGED, ORDERED and DECREED that the plaintiff's Motion for Summary Judgment for Rent in the sum total of SEVEN THOUSAND EIGHT HUNDRED DOLLARS ($7,800.00) is granted and the defendant's Counterclaim is dismissed. The Court hereby notes that plaintiff and defendant agree that the sum of $300 is to be credited to the defendant's account.

AND IT IS SO ORDERED this 10th day of July 1974.

/s/[Illegible]
JUDGE

SEEN:

/s/J. Howard Middleton, Jr.
J. Howard Middleton, Jr.
Assistant City Attorney
Counsel for Plaintiff

SEEN AND EXCEPTION HEREBY NOTED:
LUTZ & KAVALJIAN

/s/ Herman W. Lutz
Herman W. Lutz
Counsel for Defendant

EXHIBIT E

Old Town Yacht Basin, Inc.

P.O. BOX 1012 • 500 SOUTH UNION STREET • ALEXANDRIA, VIRGINIA 22313

836-1054

September 2, 1975

CERTIFIED MAIL #150313
Return Receipt Requested

David Rose Rosenfeld, Esq.
118 S. Royal Street
Alexandria, Va. 22314

Dear Mr. Rosenfeld:

You have come back onto the scene just long enough to send us papers related to your services, which will require some further discussion and consideration, and I will only highlight one important point now. You may wish to review the Virginia case in Volume 214 at page 448 so that you will be guided by an understanding of what we consider a retainer to be in the light of this case. We can only conclude from your absence on Thursday, when you promised to be on hand, that you have lost interest in our legal affairs.

There is, however, the matter which you began for Old Town Yacht Basin which we treat as a contractual obligation and it becomes necessary for me to tell you in no uncertain terms what you must yet do to satisfy the contract and earn the balance of the fee. We shall treat any failure to do gracefully what is necessary, as conduct unbecoming a conscientious and dedicated lawyer and that is: Prepare a draft of a reply brief in the U.S.

ED THROUGH

Supreme Court so that it can be timely printed and filed. This will cover the salient matters we have heretofore taken up with you, as well as submitting the newly found evidence you showed us recently, as part of the record; namely, the letterhead and contents which shows beyond a reasonable doubt that Haddock, Sewell & Kent prepared the complaint against Old Town Yacht Basin, Inc., and the very obvious argument that a conspiracy developed to place this matter before Judge Kent as soon as he became active as a Judge so that he could rule adversely as he did, all contrary to law, the canon of ethics, and violative of due process.

I would suggest that upon receipt of this letter, you immediately stir your stumps and get in touch with us, as this matter cannot be put off longer. There is also the matter of sending pertinent parts of the record to the United States Supreme Court, and going over matters set down in your statement as mentioned at the beginning of this letter.

Yours truly,

/s/John C. Gager
Member
Board of Directors

EXHIBIT F

Old Town Yacht Basin, Inc.

P.O. BOX 1012 • 500 SOUTH UNION STREET • ALEXANDRIA, VIRGINIA 22313

836-1054

October 17, 1975
Hand Delivered

David Ross Rosenfeld, Esq.
118 South Royal Street
Alexandria, Virginia 22314

Dear David:

Thank you for your letter of October 7. I am herewith hand delivering to you a copy of the city's Supplemental Reply Brief for your use in connection with additional consideration of the matter which you and Marvin Miller, Esq. will undertake on October 20.

I should certainly think you would want to file in the Supreme Court under the 25 day rule on the grounds that the city's above brief does not appear to have been filed in the case, from what we can learn, before the petition was denied.

I should also think you would want to defend against the allegations the city made against you, just as we would want to defend against the further untruthful allegations made by the city therein and the allegations of untruthfulness in Old Town Yacht Basin's affidavits.

We do not think anything was ever done about sending in pertinent facts of the record.

Sincerely,

with attachment

/s/Kathryn B. Lang
Kathryn B. Lang

FEED THROUGH

EXHIBIT G

LAW OFFICES
DAVID ROSS ROSENFELD
POST OFFICE BOX 96
118 SOUTH ROYAL STREET
ALEXANDRIA, VIRGINIA 22313
(703) 548-2600

October 20, 1975

Mrs. Kathryn B. Lang
Old Town Yacht Basin, Inc.
Post Office Box 1012
Alexandria, Virginia 22313

Dear Mrs. Lang:

I have your October 17, 1975 letter. I am delighted to see that you have retained other counsel to represent you, especially in light of the fact that my representation of Old Town Yacht Basin, Inc. was specifically limited to the preparation of a Petition for Writ of Certiorari to the United States Supreme Court. Needless to say, I will be most happy to assist Mr. Miller in familiarizing himself with this case.

I admit, however, to being somewhat puzzled by the text of your letter. Although Mr. Miller has scheduled an appointment with me on Tuesday, October 21, 1975, at 4:30 p.m., I have no knowledge of any matter which either he nor I will be undertaking or were supposed to have undertaken on October 20, 1975.

With regard to your suggestion concerning the filing of a Rule 58 petition for rehearing, I think it should be clear that I have neither the desire nor the intention of filing such a petition. Inasmuch as our reply to the respond-

ent's brief was filed well prior to the October 1, 1975 decision, all matters sought to be presented by us were, in fact, done so prior to entry of the final decision by the Supreme Court denying certiorari. Consequently, the fact that the City's brief was filed after the Supreme Court's decision cleraly indicates that it was not considered by the Court in reaching its decision.

As far as my defending myself against the allegations of the City, I am sure you are aware that I have been called worse by clients. As far as Old Town's desire to defend itself, that is strictly a matter for you people to decide, and which you obviously already have, based upon your representation by Mr. Miller.

As indicated above, I remain available to Mr. Miller to render any assistance and counsel I can, concerning his participation as new counsel in the case.

Very truly yours,

/s/David Ross Rosenfeld
DAVID ROSS ROSENFELD

DRR:ka

cc: Marvin D. Miller, Esquire

FED THROUGH

EXHIBIT H

LAW OFFICES
DAVID ROSS ROSENFELD
POST OFFICE BOX 96
118 SOUTH ROYAL STREET
ALEXANDRIA, VIRGINIA 22313
(703) 548-2600

October 23, 1975

J. Howard Middleton, Jr., Esquire
Assistant City Attorney
Office of the City Attorney
320 King Street—Suite 200
Alexandria, Virginia 22314

RE: City of Alexandria, Virginia
v. Old Town Yacht Basin, Inc.

Dear Howard:

I have a copy of your October 22, 1975 letter to the Aetna Insurance Company regarding the above matter. As previously indicated, my representation of Old Town Yacht Basin, Inc. was limited to the filing of the Petition for Writ of Certiorari in the United States Supreme Court. Inasmuch as the Petition for Writ of Certiorari was denied, my representation of Old Town is terminated.

Very truly yours,

DAVID ROSS ROSENFELD

DRR:ka

cc: Mrs. Kathryn B. Lang

EXHIBIT I

AFFIDAVIT

STATE OF VIRGINIA, City of Alexandria, SS

Personally appeared before me, the undersigned Notary Public, John C. Gager, who hereby affirms that as a member of the Board of Directors of Old Town Yacht Basin, Inc., he accompanied the attorney for Old Town Yacht Basin, Inc. to a pre-trial before Judge Kent in June, 1974, and upon deponent's suggestion, said attorney Herman Lutz asked Judge Kent to withdraw from the case on the grounds that the law firm from which he had recently come, was employed by the City of Alexandria in matters adverse to the interest of Old Town Yacht Basin, Inc., To Wit: The firm had been behind city efforts to dislodge Old Town Yacht Basin, Inc. from property to which it holds a valid title, and also because of the firm's participation on behalf of the City of Alexandria in a Federal waterfront Quiet Title action.

Witness the following signature and seal:

/s/John C. Gager (SEAL)
John C. Gager

Subscribed and sworn to before me this 29th day of October, 1975. My commission expires: March 25, 1978.

/s/Donald C. Wells, Jr.
Notary Public

[SEAL]